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FILED
JUN 28 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

DAVID GARRY DEAN and
KELLI LEE DEAN,

Debtors.

Case No. 12-14498-B-7

DC No. SL-2

In re

LESLIE SEARCY,

Debtor.

Case No. 12-12576-B-7 ✓

DC No. SL-2

**MEMORANDUM DECISION REGARDING MOTIONS FOR
REVIEW AND DISGORGEMENT OF FEES**

This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. B.A.P. R. 8013-1.

Scott Lyons, Esq., appeared on behalf of the moving parties, David and Kelli Dean and Leslie Searcy.

Allen Broslovsky, Esq., appeared on behalf of the respondent, Gregory Blevins, Esq.

Before the court are two motions for review and disgorgement of fees paid to attorney Gregory Blevins, Esq. ("Blevins"), filed by Blevins' former clients David and Kelli Dean (the "Deans") and Leslie Searcy ("Searcy") (the Deans and Searcy are collectively referred to herein as the "Debtors"). The Debtors seek relief pursuant to 11

1 U.S.C. § 329¹ and Federal Rule of Bankruptcy Procedure 2017 (the “Motions”). Both
 2 Motions were consolidated for purposes of discovery and trial. They were taken under
 3 submission after an evidentiary hearing on May 21, 2013.

4 For the reasons set forth below and after careful consideration of the record, the
 5 court will order the following:

6 (1) That Blevins shall disgorge to the Deans the monies he received for
 7 attorney’s fees and costs in the amount of \$1,200;

8 (2) That Blevins shall disgorge to Searcy’s parents the monies he received
 9 on Searcy’s behalf for attorney’s fees and costs in the amount of \$1,000;
 and

10 (3) That, for a period of two years, Blevins shall not file any documents in
 11 the Bankruptcy Court for the Eastern District of California without also
 filing copies of the “wet signature” pages showing that they were actually
 reviewed and signed by his clients and by himself.

12 This memorandum decision contains the court’s findings of fact and conclusions
 13 of law required by Federal Rule of Civil Procedure 52(a), made applicable to this
 14 contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c). The court
 15 has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 11 U.S.C. §§ 105 and 329,
 16 and General Order Nos. 182 and 330 of the U.S. District Court for the Eastern District of
 17 California. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A).

18 **Background and Findings of Fact.**

19 Blevins is a licensed attorney who practices law in Tulare, California. He
 20 specializes in the practice of criminal defense and bankruptcy, and he was the attorney of
 21 record for the Debtors in their chapter 7 bankruptcy cases. Sometime after their
 22 discharges were entered and their cases closed, the Debtors retained new counsel, Scott
 23 Lyons, Esq. (“Lyons”). Lyons reopened their cases and filed the Motions seeking
 24 disgorgement of the monies that had been paid to Blevins. The Debtors contend that

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 26 ¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code,
 27 11 U.S.C. §§ 101–1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9036, as enacted
 28 and promulgated *after* October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and
 Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (enacted Apr. 20, 2005).

1 Blevins' compensation exceeded the reasonable value of the services provided and should
2 be disgorged pursuant to § 329(b) of the Bankruptcy Code.

3 The Deans and Searcy each executed a single-paged contract with Blevins (the
4 "Fee Agreement"), which stated at paragraph 1:

5 This is a fixed agreement and becomes completely binding upon signing.
6 The fixed fee is nonrefundable and is earned by the Attorney upon
7 execution of this contract because Client retains the Attorney for purpose of
ensuring Attorney's availability for representation as Attorney is foregoing
other employment opportunities by being available for Client's cause.

8 The only language in the Fee Agreement alluding to the services Blevins would provide is
9 found in paragraph 3 and reads, "The Attorney agrees to represent Client in Chapter 7
10 Bankruptcy filing." (Emphasis in original.)

11 Using the court's electronic case filing ("ECF") system, someone in Blevins'
12 office filed a voluntary chapter 7 petition for the Deans on May 18, 2012. Searcy's
13 chapter 7 petition was electronically filed on March 23, 2012. Blevins received a fee in
14 the amount of \$1,200 from the Deans, and a fee in the amount of \$1,000 from Searcy's
15 parents before the petitions were filed. This amount included the filing fees and other
16 costs. With the petitions, the Deans' and Searcy's Schedules A through J, Statements of
17 Financial Affairs, Statements of Intention, and Official Forms 22A were also filed using
18 the ECF system. The last pages of those documents, on the lines where the Debtors were
19 supposed to sign their names and verify under penalty of perjury that the information
20 provided in documents was true and correct, bear only electronic "virtual" signatures.
21 The Deans' signatures appear as "/s/ David Garry Dean, Jr." and "/s/ Kelli Lee Dean."
22 Searcy's signature appears as "/s/ Leslie Searcy."

23 The court heard sworn testimony during the course of the evidentiary hearing.
24 Both the Deans and Searcy testified that they did not recall reviewing or signing their
25 petitions and schedules. Neither were they provided with copies of the documents that
26 they had purportedly signed and that had been filed on their behalf with the bankruptcy
27 court.

28 After retaining new counsel and filing these Motions, the Deans and Searcy each

1 requested their client files from Blevins' attorney, Allen Broslovsky, Esq. ("Broslovsky").
2 Broslovsky responded to Lyons by letter dated May 9, 2013, which stated that "Mr.
3 Blevins has no hard copies to produce." Included in the correspondence was a computer
4 compact disc (the "CD"). The CD contained digital images of documents comprising the
5 Deans' and Searcy's client files. The only imaged documents on the CD that bore the
6 Deans' or Searcy's handwritten signatures were the intake cards, the forms granting
7 permission to access their credit reports, the Fee Agreements, the Form 21 "Statement[s]
8 of Social Security Number(s)," and copies of their own client records, such as original tax
9 returns. Neither of the petitions, nor any of the schedules and other forms prepared for
10 filing with the court, contained handwritten signatures of the Debtors or of Blevins.

11 Blevins admitted that he was aware of his duty to keep hard copies of the signed
12 documents for a period of three years² but that he had not obtained the Deans or Searcy's
13 signatures on the petitions and schedules. He also admitted that he had not personally
14 signed any of the documents before they were filed. The Debtors all testified that they
15 had not met with, nor received any legal advice from, Blevins prior to and after their
16 cases were filed. Instead, they testified that all of the advice they did receive came from
17 Blevins' legal assistant, Jeffrey Boggs.

18 Neither the Deans nor Searcy were able to complete their § 341 creditors' meetings
19 at the initial sitting because the documents that had been provided to the chapter 7 trustee
20 were incomplete. In each case, the Debtors were required to travel to the courthouse in
21 Fresno, California, and appear for a second meeting with the trustee. It is undisputed that
22 Blevins did not appear with the Deans at their first creditors' meeting. It is also
23 undisputed that Blevins did not appear to represent Searcy at either of her two creditors'
24 meetings. Although the evidence suggests that Blevins was present at the Deans' second
25 meeting, the Deans testified that he did not look like the person who did appear to
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28 ² See LBR 9004-1(c)(1)(D).

1 represent them at that meeting.³ The court is persuaded that the Deans are mistaken, that
2 Blevins did appear with the Deans at their second creditors' meeting but that they did not
3 recognize him to be their attorney. In this regard, this part of the Deans' testimony, that
4 Blevins did not appear at the second meeting, serves to corroborate their other testimony
5 that they had never before met Blevins or spent any time in consultation with Blevins
6 prior to the filing of their petition.

7 After conclusion of the Debtors' creditors' meetings, their cases were rather
8 uneventful. The Debtors received their discharges, and both cases were closed as "no-
9 asset" cases shortly thereafter. Other than the delay occasioned by having to appear for
10 two creditors' meetings, there is no evidence that either of the Debtors were harmed as a
11 result of Blevins' representation.

12 **Issues Presented.**

13 The Debtors have each requested disgorgement of the attorney's fees paid to
14 Blevins in connection with their bankruptcy cases under § 329, which allows the court to
15 consider whether the fees paid exceed the value of the services rendered in connection
16 with their bankruptcy cases. Therefore, the court must decide, first, whether the fees paid
17 by the Deans and by Searcy's parents on her behalf exceeded the value of the services the
18 Debtors received from Blevins. In addition, the court will address two issues which arise
19 from the evidence introduced at trial: (1) whether the Fee Agreements complied with the
20 requirements of BAPCPA; and (2) Blevins' misuse of virtual signatures to represent that
21 the petitions had actually been reviewed and signed by his clients and himself.⁴

22
23 ³ Blevins arranged for "special appearance counsel" to appear with the Deans and Searcy at their
24 other § 341 creditors' meetings.

25 ⁴ At closing argument, Lyons also asked the court to award a punitive monetary sanction against
26 Blevins and to bar him from practicing in the bankruptcy court for an indefinite period of time. Although
27 the testimony and evidence produced at trial might support such extraordinary relief, the Motions
28 themselves only request disgorgement of Blevins' fees. The Debtors' request for punitive and injunctive
relief was not pleaded in the moving papers and will not be considered for the first time at closing
argument. With regard to the misuse of virtual signatures issue, Blevins acknowledged the problem and
consented to accept the restrictions stated herein.

1 **Discussion and Conclusions of Law.**

2 Pursuant to § 329 of the Bankruptcy Code, the bankruptcy court has the authority,
 3 indeed the duty, to supervise the attorney's fees charged to debtors in bankruptcy cases
 4 and to order disgorgement, where appropriate. *See Law Offices of Nicholas A. Franke v.*
 5 *Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997). Specifically, the statute
 6 provides, in relevant part,

7 (b) If such compensation exceeds the reasonable value of any such
 8 services, the court may cancel any such agreement, or order the
 return of such payment, to the extent excessive, to—

9 (1) the estate, if the property transferred—

10 (A) would have been property of the estate; or

11 (B) was to be paid by or on behalf of the debtor under a plan
 12 under chapter 11, 12, or 13 of this title; or

13 (2) the entity that made such payment.

14 11 U.S.C. § 329(b).

15 An Attorney's Duty to Clients. A debtor who retains the services of an attorney
 16 for the purpose of a bankruptcy filing is entitled to an appropriate level of prepetition
 17 counseling and subsequent representation by that attorney at each crucial stage of the
 18 bankruptcy process. An attorney has a duty to meet and advise his or her clients. *See Bill*
 19 *Parker & Assocs. v. Hope (In re Dalton)*, 101 B.R. 820, 821 (M.D. Ga. 1989)
 20 (Disallowance of fees was appropriate for chapter 13 attorney who "failed to meet the
 21 minimum standards for bankruptcy practice.") The attorney's duty is not delegable to
 22 non-attorneys.

23 Blevins did not meet with the Debtors; he did not counsel them regarding any non-
 24 bankruptcy alternatives, nor did he personally advise them regarding their assets and
 25 debts or answer their questions. In addition, he did not represent them at each of their
 26 § 341 creditors' meetings and his arrangement to have "special appearance counsel,"
 27 someone totally unknown to the Debtors, do so did not comply with the requirements of
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1 Local Bankruptcy Rule 2017-1.⁵ No evidence was submitted to contradict the Debtors'
 2 testimony, that they did not meet with or receive any prepetition advice from Blevins.
 3 Blevins and his witnesses testified that it was his "policy" to meet personally or by
 4 telephone with his bankruptcy clients prior to filing their cases. However, neither Blevins

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 6 ⁵ Local Bankruptcy Rule 2017-1 provides, in part, the following:

7
 8 (b) Appearance as Attorney of Record.

9 (1) Appearance Required. Except as permitted in Subpart (c) of this Rule, no
 10 attorney may participate in any action unless the attorney has appeared as an
 11 attorney of record. A single client may be represented by more than one attorney
 of record to the extent authorized by the applicable Rules of Professional
 Conduct.

12 (2) Manner of Making Appearance. Appearance as an attorney of record is
 13 made:

14 (A) By signing and filing an initial document;

15 (B) By causing the attorney's name to be listed in the upper left hand
 16 corner of the first page of the initial document;

17 (C) By physically appearing at a court hearing in the matter, formally
 18 stating the appearance on the record, and then signing and filing a
 confirmation of appearance within seven (7) days; or

19 (D) By filing and serving on all parties a substitution of attorneys as
 20 provided in Subpart (h) of this Rule.

21 LBR 2017-1(b). Another part of the local rule then provides,

22 (A) Scope of Representation in Bankruptcy Cases and Proceedings.

23 ...

24 (2) An attorney appearing in a bankruptcy case or in an adversary proceeding
 25 may not withdraw from representation, or decline to act on behalf of the client,
 26 without first complying with the withdrawal requirements of Subpart (e) of this
 27 Rule. Any contract or agreement which purports to limit the scope of an
 attorney's representation, except as permitted by Subpart (a)(1) of this Rule, will
 not be recognized by the Court.

28 LBR 2017-1(a)(2).

1 nor his witnesses had any personal recollection that this “policy” was followed in
2 connection with the Debtors’ cases, and nothing in Blevins’ case files suggests that the
3 “policy” was followed. The court is persuaded that the fees received by Blevins exceeded
4 the value of the services he provided. Any benefit the Deans and Searcy received at the
5 conclusion of their bankruptcy cases were essentially a result of the bankruptcy process,
6 and Blevins’ office only provided the necessary forms and the clerical services. *See In re*
7 *Dalton*, 101 B.R. at 821.

8 Blevins’ Fee Agreements. BAPCPA imposes specific obligations on “debt relief
9 agencies”⁶ for the benefit of “assisted persons,”⁷ including a debt relief agency’s
10 obligation to make certain disclosures to an assisted person. *See, e.g.*, 11 U.S.C. § 527.
11 BAPCPA also requires that a written contract between a debt relief agency and an
12 assisted person “clearly and conspicuously” explain the services to be provided and the
13 fees or charges for such services, 11 U.S.C. § 528(a)(1), and that a copy of this “fully
14 executed and completed contract” be provided to the assisted person, 11 U.S.C.
15 § 528(a)(2). Blevins’ law office is considered to be a “debt relief agency” within the
16 meaning of the Bankruptcy Code. *See* 11 U.S.C. § 101(12A); *Milavetz, Gallop &*
17 *Milavetz, P.A. v. United States*, 559 U.S. 229, 239 (2010) (holding that “attorneys who
18 provide bankruptcy assistance to assisted persons are debt relief agencies within the
19 meaning of the BAPCPA”). Therefore, pursuant to § 528(a), Blevins had an obligation to
20 provide his clients with a copy of the “fully executed and completed contract,” containing
21 the information required by the statute.

22 Blevins’ Fee Agreements with the Debtors do not satisfy these statutory
23 requirements. Blevins’ attempt to use a “one-size-fits-all” form for his fee agreements
24 with his bankruptcy clients is simply inappropriate. These form fee agreements, as
25 demonstrated by the Fee Agreements with the Debtors, do not describe the specific
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27 ⁶ A “debt relief agency” is defined in § 101(12A) of the Code.

28 ⁷ An “assisted person” is defined in § 101(3) of the Code.

1 services to be provided (other than a general statement that Blevins would represent his
2 clients in their chapter 7 case), nor do they list the fees or costs to be charged (other than
3 stating that the fixed fee, whatever that may be, is not refundable). Therefore, Blevins’
4 Fee Agreements with the Debtors did not comply with the requirements of § 528(a)(1) of
5 the Code, making them void and unenforceable. *See* 11 U.S.C. § 526(c)(1). Based on
6 this impropriety alone, Blevins’ fees may be ordered disgorged. *See Gargula v. Bisges*
7 (*In re Clink*), No. 10-21489-DRD-7, 2013 WL 1741945, at *2 (Bankr. W.D. Mo. Apr. 23,
8 2013) (ordering, pursuant to authority under § 105(a), that debtor’s attorney disgorge all
9 fees paid for failing to obtain written contract with debtor in violation of § 528(a)); *cf.*
10 *Berry v. U.S. Tr. (In re Sustaita)*, 438 B.R. 198, 212–13 (9th Cir. BAP 2010) (noting that
11 bankruptcy court may impose appropriate civil penalty under § 526(c)(5)(B) for an
12 intentional violation of § 526 but reversing court’s imposition of sanctions for lack of
13 adequate notice to sanctioned petition preparer). In addition, the evidence shows that
14 neither the Deans nor Searcy received a copy of the fully-executed Fee Agreements as is
15 required by § 528(a)(2).

16 Blevins’ Misuse of Virtual Signatures. Lastly, the court considers Blevins’ filing
17 of documents with the Debtors’ virtual “/s/” signatures. In essence, the documents that
18 Blevins filed with the court falsely represented on their face that they had been reviewed
19 by the Debtors and verified by them as truthful under penalty of perjury.

20 Bankruptcy Rule 5005 provides that “[a] court may by local rule permit or require
21 documents to be filed, signed, or verified by electronic means.” Fed. R. Bankr. P.
22 5005(a)(2). This district’s Local Bankruptcy Rule 9004-1, in turn, allows the use of
23 electronic signatures in documents electronically filed through the court’s ECF system.
24 *See* LBR 9004-1(c)(1)(A), (B)(iii). However, the local rule specifically prohibits the
25 inappropriate use of electronic signatures on e-filed documents and imposes certain
26 restrictions and requirements on this privilege. *See* LBR 9004-1(c)(1)(C), (D). The rule
27 is clear as to what is required of attorneys: They must possess a signed original document
28 when they file the electronic version, LBR 9004-1(c)(1)(C), and they must retain that

1 original document for three years, LBR 9004-1(c)(1)(D).

2 Here, Blevins failed to do either in the two bankruptcy cases. In both cases,
3 Blevins did not obtain “wet signatures” from the Debtors prior to filing their documents,
4 even though those filed documents showed the Debtors’ “/s/” signatures.⁸ As Local
5 Bankruptcy Rule 9004-1(c)(1)(C) explicitly provides, by filing a document with a
6 debtor’s electronic signature, Blevins was representing to the court that a copy of that
7 document with the debtor’s original signature exists at the time of that document’s filing.
8 Thus, with each filed document bearing an electronic signature, Blevins made a false
9 representation to the court.

10 Without truthful, accurate, and complete documents, the bankruptcy system simply
11 cannot function. *See Kavanagh v. Leija (In re Leija)*, 270 B.R. 497, 501 (Bankr. E.D.
12 Cal. 2001) (citing *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987)). This
13 court has previously ruled that the signing of bankruptcy documents under penalty of
14 perjury, without actually reviewing and verifying the accuracy of those documents, is a
15 per se false oath warranting denial of the debtor’s discharge. *See id.* at 503–04. The
16 value of Blevins’ services is further diminished by the fact that he carelessly exposed his
17 clients to the risk of discharge litigation and the possibility of losing the only real benefit
18 in their cases—a chapter 7 discharge—for which they paid him a fee in the first place.

19 **Conclusion.**

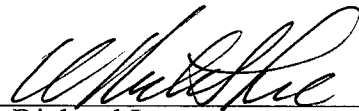
20 Based on the foregoing, the Motions will be granted. Within 10 days, respondent
21 Gregory Blevins, Esq., shall disgorge to the Deans the monies he received in connection
22 with the Deans’ bankruptcy case in the amount of \$1,200. Also, within 10 days, Blevins
23 shall disgorge to Searcy’s parents the monies they paid on behalf of Searcy in connection
24 with her bankruptcy case in the amount of \$1,000. Blevins shall also file proof of the

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26 ⁸ At trial, Blevins conceded his failure to obtain his clients’ actual signatures on the documents
27 filed with the court and to sign those documents himself, and he offered, through his counsel at closing
28 argument, to abide by an order requiring him to file copies of future petitions and schedules with “wet
signatures.”

1 disgorgement with the court.

2 In addition, for a period of two years, commencing July 1, 2013, Blevins may not
3 file any documents with electronic signatures in the Bankruptcy Court for the Eastern
4 District of California without also filing copies of the "wet signatures" for said
5 documents, affirmatively showing that the original documents had been reviewed and
6 signed by his clients and, where applicable, by himself.

7 Dated: June 28, 2013

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9 _____
10 W. Richard Lee
11 United States Bankruptcy Judge
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Instructions to Clerk of Court
Service List - Not Part of Order

The Clerk of Court is instructed to send the Order or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked _____, via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case), and X Other Persons Specified Below:

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